

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1924.

No. 4103.

78

JOSEPH H. HIMES, APPELLANT,

vs.

**LINCOLN HOTEL CORPORATION, A CORPORATION; JOHN
V. MORRIS, PRESIDENT; A. ROBERT ELMORE, TREAS-
URER, ET AL.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JANUARY 14, 1924.

PRINTED FEBRUARY 26, 1924.

Court of Appeals of the District of Columbia.

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JOSEPH H. HIMES, APPELLANT,

vs.

LINCOLN HOTEL CORPORATION, A CORPORATION; JOHN V. MORRIS, PRESIDENT; A. ROBERT ELMORE, TREASURER; W. H. ALEXANDER, SECRETARY; THOMAS P. BONES, JAMES D. HOBBS, AND HARRY WARDMAN, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 4103.

JOSEPH H. HIMES, Appellant,

vs.

LINCOLN HOTEL CORPORATION, a Corporation, et al.

a Supreme Court of the District of Columbia.

Equity. No. 41390.

JOSEPH H. HIMES, Plaintiff,

vs.

LINCOLN HOTEL CORPORATION, J. C. MYERS, A. ROBERT ELMORE,
THOMAS P. BONES, and JAMES D. HOBBS, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia, Holding
Equity Court.

Equity. No. 41390.

JOSEPH H. HIMES, Plaintiff,

vs.

LINCOLN HOTEL CORPORATION, J. C. MYERS, A. ROBERT ELMORE,
THOMAS P. BONES, and JAMES D. HOBBS, Defendants.

Memorandum.

June 12, 1923.—Bill to set aside conveyance of corporate property and appearance of Lambert & Yeatman, filed.

Amended Bill of Complaint.

Filed June 22, 1923.

Equity. No. 41390.

JOSEPH H. HIMES, Plaintiff,

vs.

LINCOLN HOTEL CORPORATION, a Corporation; JOHN V. MORRIS, President; A. Robert Elmore, Treasurer; W. H. Alexander, Secretary; Thomas P. Bones, and James D. Hobbs and Harry Wardman, Defendants.

The amended bill of complainant of the above-named plaintiff respectfully represents to the Court as follows:

1. Plaintiff is a citizen of the United States, and a resident of the State of Ohio, and files his suit in his own right and as a holder of preferred and common stock of the defendant, Lincoln Hotel Corporation, on his own behalf, and that of all other stockholders of the said corporation similarly situated and who may desire to join in this suit.

2. The defendant, Lincoln Hotel Corporation, is a corporation incorporated under the laws of the State of Delaware, doing business in the District of Columbia, and is sued in its own right as 2 & 3 hereinafter set forth. The defendants, John V. Morris, A. Robert Elmore, W. H. Alexander, Thomas P. Bones and James D. Hobbs and Harry Wardman, are citizens of the United States and residents of the District of Columbia. The defendants, John V. Morris, A. Robert Elmore, and W. H. Alexander, are sued respectively, as Vice-President, Treasurer and Secretary, and also as the board of directors of, the Lincoln Hotel Corporation. The defendants, Thomas P. Bones and James D. Hobbs, and Harry Wardman, are sued in their own right, as hereinafter set forth.

3. The defendant, Lincoln Hotel Corporation, was incorporated under the laws of the State of Delaware, with an authorized issue of capital stock of One Million Dollars (\$1,000,000). The said defendant also was authorized to issue preferred stock to the extent of Five Hundred Thousand Dollars (\$500,000). That the said defendant corporation was incorporated for the purpose of acquiring title to the property at the northeast corner of Twelfth and H Streets northwest, Washington, D. C., in order to erect and conduct thereon a hotel, the said property being more particularly described as Lots 1, 2, 804, 805, 806, 807 and 808, in Square 318, which property has a frontage of about one hundred and twenty-seven (127) feet on H Street, by one hundred and six (106) feet on Twelfth Street.

4. That the said defendant corporation, being in financial difficulty, and desiring, as represented to the plaintiff, to consummate its object and purpose of acquiring title to the afore-described real estate,

in order that it may erect thereon a hotel building, acting through its officers, and chiefly the defendant A. Robert Elmore, sought the assistance of the plaintiff and solicited the plaintiff to assist
4 the said corporation to the extent of Fifty Thousand Dollars (\$50,000). That after negotiations, the plaintiff entered into an agreement with the defendant Lincoln Hotel Corporation, which agreement was duly authorized by resolution of the board of directors of said corporation, and was dated the 27th day of January, 1923, in and by which, among other things, the defendant corporation agreed to sell and deliver to the plaintiff Seven Hundred (700) shares of its preferred stock and Seven Hundred (700) shares of its common stock, each class of stock being of the par value of One Hundred Dollars (\$100) per share, for the sum of Fifty Thousand Dollars (\$50,000); and it was further agreed that the said sum of Fifty Thousand Dollars (\$50,000) would be deposited to the credit of said corporation, to be used solely for the purpose of acquiring title to the real estate hereinbefore described, and that not more than Ten Thousand Dollars (\$10,000) of the said Fifty Thousand Dollars (\$50,000) would be withdrawn by the said corporation, for the purpose of organization expenses, promotion and handling of the sale of the preferred and common stock remaining; and in and by said agreement it was further provided that the said corporation would promptly acquire title to the said property, and "commence the erection of a hotel upon said premises," and that after title was acquired to said real estate by the defendant corporation, out of the first sale or sales of its preferred stock, the proceeds thereof should be used to acquire from the plaintiff, at par, the said Seventy Thousand Dollars (\$70,000) of preferred stock, or such part thereof, if any, as the said plaintiff may desire to sell at par; and it was further agreed that
5 the said corporation would deposit Four Thousand Five Hundred (4,500) shares of its common stock in the hands of two trustees, one to be selected by the said corporation and one to be selected by the plaintiff, said stock to be held, together with the Seven Hundred (700) shares of common stock issued to the plaintiff, by said trustees as voting trustees, for such purposes and under such conditions as may be directed in writing by the said corporation and the plaintiff. A copy of the said agreement is annexed to the original bill of complaint filed herein, marked "Plaintiff's Exhibit A," and it is prayed that the same may be considered and read as a part hereof, the same as if fully set forth herein.

5. Plaintiff further says that, in pursuance of the contract hereinbefore set forth, and relying upon the agreement of the defendant corporation to erect upon the said property when acquired, a hotel, he paid to the said defendant corporation the sum of Fifty Thousand Dollars (\$50,000), and the said corporation issued and delivered to him Certificate No. 7, for Seven Hundred (700) shares of its preferred stock, of the par value of One Hundred Dollars (\$100) per share, Certificate No. 7, for Seven Hundred (700) shares of its common stock, of the par value of One Hundred Dollars (\$100) per share, and also issued and delivered its Certificate No. 8, for Four

Thousand Five Hundred (4,500) shares of its common stock, to Wilton J. Lambert and Walter A. Johnston, as trustees, being the persons selected by the plaintiff and the defendant corporation to hold the same as a voting trust, under the provisions of the said contract.

6. Plaintiff further says that, after the receipt from him of the
aforementioned Fifty Thousand Dollars (\$50,000), the said
6 defendant corporation with the said moneys, did acquire title
to the hereinbefore described real estate, and until the hap-
pening of the transaction hereinafter complained of, which resulted
in the execution of a deed of the said property to the defendants
Bones and Hobbs, retained title to the said real estate, subject to a
first trust in the sum of One Hundred and Fifty-five Thousand Dol-
lars (\$155,000), held by the National Mortgage Company, a second
trust of Two Hundred and Seventy-five Thousand Dollars (\$275,-
000), held by the International Bank, and a third trust in the sum
of One Hundred and Twenty-five Thousand Dollars (\$125,000),
held, plaintiff is advised and believes and therefore avers, by the Po-
tomac Finance Corporation.

7. Plaintiff further says that, without his knowledge and consent,
either individually or as a stockholder of the defendant corporation,
and without the consent of the trustees under the aforementioned
voting trust, as well as other stockholders, the following proceedings
were had at meetings of the board of directors of the defendant cor-
poration, on the dates indicated:

“Special Meeting of the Board of Directors of Lincoln Hotel
Corporation.

“A special meeting of the Board of Directors of the Lincoln Hotel
Corporation was held on Friday, the 6th day of October, 1923, at
two o'clock p. m., at the office of Walter A. Johnston, Colorado
Building, Washington, D. C., pursuant to call of President and
notice.

7 “Present: J. C. Myers, W. H. Alexander, A. R. Elmore,”
being all the directors.

“On motion of Mr. Alexander, Mr. J. V. Morris was elected a
director and vice-president.

Mr. J. V. Morris accepted his election as a director and vice-
president of the Lincoln Hotel Corporation, and participated in the
meeting.

“The Secretary read the resignation of Mr. J. C. Myers as president
and director.

“Washington, D. C., April 2, 1923.

“To the Directors of the Lincoln Hotel Corporation.

“GENTLEMEN:

“Owing to the press of business which requires me to be out of the
city a great deal, I hereby tender my resignation as president and

director of the Lincoln Hotel Corporation, to take effect immediately.

"Respectfully,

J. C. MYERS.

"On motion of Mr. Morris, seconded by Mr. Elmore, the resignation of Mr. Myers as president and director of the Lincoln Hotel Corporation was accepted.

"On motion, it was ordered that recess be taken until 11:30 a. m., the 9th of April, 1923.

"Thereupon, the meeting adjourned.

"W. H. ALEXANDER,
Secretary."

8 "Recessed Meeting of the Board of Directors of the Lincoln Hotel Corporation.

"A recessed meeting of the Board of Directors of the Lincoln Hotel Corporation was held on Monday, April 16, 1923, at 11 a. m., at the office of the corporation, 506 Woodward Building, Washington, D. C.

"Present: J. V. Morris, W. H. Alexander.

"The Vice-President reported that the work of completing the financial plans of the corporation was under way, and although the anticipated arrangements for disposing of the second trust did not work out as planned, he had other plans which would be submitted as early as possible.

"There was no further business to report, and

"Upon motion, it was ordered that a recess be taken until Monday, May 7, 1923.

"Thereupon, the meeting adjourned.

"W. H. ALEXANDER,
Secretary."

"Recessed Meeting of the Board of Directors of the Lincoln Hotel Corporation.

"A recessed meeting of the Board of Directors of the Lincoln Hotel Corporation was held on Monday, May 7, 1923, at 11 a. m., at the office of the corporation, 506 Woodward Building, Washington, D. C.

"Present: J. V. Morris, W. H. Alexander.

9 "The Vice-President reported that negotiations with Gov. Leslie M. Shaw, now in California, with whom he had taken up the matter of financing the balance of the corporation's second trust, had been very unsatisfactory, owing to the distance and to the length of time required to give information in detail to Gov. Shaw, and stated that the only way in which satisfactory arrangements with Gov. Shaw could be made, in the opinion of Mr. Morris, was to make a trip to personally confer with Gov. Shaw at his home in California, and suggested that a recess be taken for one month, in order that Mr. Morris might present to Gov. Shaw in person the plans for working out the complete financial plans of the corporation.

"Upon motion, it was ordered that a recess be taken until Thursday, June 7, 1923, or until such time after that date as Mr. Morris would be able to reach Washington.

"Thereupon, the meeting adjourned.

"W. H. ALEXANDER,
Secretary."

"Recessed Meeting of the Board of Directors of the Lincoln Hotel Corporation.

"A recessed meeting of the Board of Directors of the Lincoln Hotel Corporation was held on Thursday, June 7, 1923, at the office of W. A. Johnston, Colorado Building, Washington, D. C., at 11 o'clock a. m.

"The Vice-President read a communication from Harry Wardman, wherein he offered to exchange an apartment house he is building on R Street, between 16th and 17 Streets northwest, for real estate owned by this corporation, at the corner of 12th and H Streets.

"Discussion of the details of the proposition submitted by Mr. Wardman was entered into. The Vice-President stated that
10 Gov. Shaw, with whom he had been in conference in California, had changed his mind in connection with the advance of funds necessary to complete the erection of the hotel, and that he had come to a decision in the matter and could not be induced to render further financial assistance.

"The Vice-President stated further, that before going to California to confer with Gov. Shaw, he had made several attempts to arrange a conference with Mr. Joseph Himes, one of the largest stockholders, in an effort to lay before him a plan which would have undoubtedly completed the financing of the project, but was unable to obtain an interview, and was informed by those he believed to be speaking for Mr. Himes that Mr. Himes was not interested further in the affairs of the corporation, and that he had decided to charge off as a loss the amount that he had paid for his stock in the Lincoln Hotel Corporation.

"The Vice-President stated that, in his opinion, the proper thing to do was to conserve the assets of the corporation for the stockholders; that the corporation had been given notice to effect the holders of the first trust would not renew the loan or extend the time of payment beyond the due date, August 2; that the second trust was being held overdue pending his return from California, and in the event of receiving no assistance from Gov. Shaw or from Mr. Himes, it would be an almost impossible task for directors to finance the extension of the existing trust, and that foreclosure proceedings seemed inevitable, unless some arrangements were entered into whereby the trust soon to become due would be assumed by some responsible party.

"The Vice-President also stated that Harry Wardman was
11 leaving for Europe within a day or two, and unless the exchange was agreed to before he left, there was no way, in his opinion, to protect the property and the assets of the corporation; but

if the exchange with Mr. Wardman was consummated, the corporation would have a substantial equity in an apartment hotel building, which would produce satisfactory returns to the stockholders, at a date much earlier than if the hotel building was completed as originally planned.

"Upon motion, the following resolution was adopted:

"Resolved, That the offer of Harry Wardman, to exchange the property known as Lots Eighty-one (81), Eighty-two (82), Eighty-three (83), Eighty-four (84), Eighty-five (85), Eighty-six (86), Eighty-seven (87), Eighty-eight (88), Eight-nine (89) and Ninety (90), in Square One Hundred and Seventy-nine (179), fronting One Hundred and Sixty-four and five-tenths (164.5) feet on R Street Northwest, between Sixteenth and Seventeenth Streets Northwest, subject to a first trust of Four Hundred Thousand Dollars (\$400,000), at six (6) per cent, having two and one-half (2½) years to run, with a guarantee of renewal for three (3) years additional, and a second trust of One Hundred and Fifty Thousand Dollars (\$150,000), payable Two Thousand Dollars (\$2,000) per month, with interest at six (6) per cent, payments to commence six (6) months after the completion of building, for Lots One, (1) Two (2), Three (3) and Four (4), in subdivision made by the heirs of John Davidson, in part of Square Three Hundred and Eighteen (318), as per plat recorded in Liber N. K., folios Ninety-two (92) and Ninety-three (93), in the records of the Office of the Surveyor of the Dis-

12 trict of Columbia; also part of Original Lot Two (2), in said Square Three Hundred and Eighteen (318), described as follows: Beginning at a point on H Street North, distant twenty-five (25) feet one (1) inch West from the Southeast corner of said Lot Two (2), and running thence due North Ninety-eight (98) feet, thence West twenty-five (25) feet, thence South Ninety-eight (98) feet, and thence due East on H Street to the point of beginning, subject to right of way for alley purposes over the North four (4) feet by full width of said Lots Three (3) and Four (4), subject to three (3) existing trusts of record: a first trust for One Hundred and Fifty-five Thousand Dollars (\$155,000); a second trust for Two Hundred and Seventy-five Thousand Dollars (\$275,000), and a third trust for Twelve Thousand Five Hundred and Two Dollars and Eighty-eight cents (\$12,502.88), all bearing interest at the rate of six (6) per cent, except the first trust, which bears interest at the rate of eight (8) per cent—be accepted; and further, that the Vice-President and Secretary of this corporation be, and they are hereby, directed to make, execute and deliver a deed of conveyance for the said property, to said Harry Wardman, or his appointees, and to do and perform all things deemed necessary to fully assure the title to the same.

"Upon motion, it was ordered that a recess be taken until Monday, June 18, 1923, at 11 a. m.

"Thereupon, the meeting adjourned.

"W. H. ALEXANDER,
"Secretary.

8. Plaintiff further says, that under the laws of the State of Delaware, the domicile of the defendant corporation, it is specifically provided that a corporation incorporated by charter of the said State may only sell, lease or exchange all of its property and assets, 13 upon such terms and conditions as its board of directors deem expedient, "when and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power, given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of a majority of the holders of the voting stock issued and outstanding, provided, however, that the certificate of incorporation may require the vote or written consent of a larger proportion of the stockholders." That the certificate of incorporation of the defendant corporation specifically provides as follows:

"With the consent in writing, pursuant to a vote of the holders of seventy-five (75) per cent of the capital stock issued and outstanding, the directors shall have authority to dispose in any manner of the whole property of this corporation." A copy of said charter being hereto appended marked "Exhibit A" and prayed to be read as a part hereof.

9. Plaintiff further says that it will be seen by reference to the minutes of the meeting of the 6th day of October, 1923, of the directors that the said meeting was held at the office of Walter A. Johnston in the Colorado Building pursuant to call, but that no suggestion was made of the call being for the purpose of considering any question relative to the disposition of the property of the corporation; that at said meeting the three directors, to wit, Morris, Alexander and Elmore, were present; that apparently said meeting took a recess until Monday, May 7th, 1923, without specifying where the 14 recessed meeting would convene or at what time; that thereupon it appears that the meeting of May 7th was convened at 11 o'clock, not at the office of Mr. Johnston where the previous meeting had been held, but at the office of the corporation at 506 Woodward Building; that at said so-called recessed meeting only two of the directors appear to have attended, to-wit, Morris and Alexander; that at said meeting no suggestion was made of disposing of the property and that meeting was adjourned to take a recess until Thursday, June 7th, 1923, or until such time after that date as Mr. Morris would be able to reach Washington; that no suggestion was made as to where or what time the meeting would reconvene on June 7th, but that by the terms of the minutes of June 7th, 1923, it appears that the meeting reconvened at the office of Mr. W. A. Johnston, Colorado Building, whereas the previous meeting had been held at the office of the corporation and that it reconvened at 11 o'clock and at said meeting were only present Messrs. Morris and Alexander and no notice apparently was given to the said Elmore of the change or place of meeting or of the time of meeting or of the intention to transact business relative to selling out all of the assets of the corporation; that a resolution of the board of directors of the defendant corporation which plaintiff is advised and believes and avers was attempted to be

passed by only two of the directors, to-wit, Messrs. Morris and Alexander, in the absence of the said Elmore and in the absence of any notice to him attempts to authorize a contract to exchange the real estate held by the corporation and that the hereinbefore described real estate comprises the whole property of the said corporation, and plaintiff avers that the said resolution was not passed pursuant to the vote of the holders of seventy-five (75) per cent of the capital stock issued and outstanding as required by the said corporation's certificate of incorporation and in fact was not authorized or approved at any meeting of the stockholders of the said corporation duly called for that purpose.

10. Plaintiff further says that the said defendant corporation, purporting to act through the defendant, J. V. Morris, as Vice-President, signed what purports to be an agreement to make an exchange of the said property, dated June 5, 1923, in and by the terms of which agreement, among other things, the defendant corporation agreed to exchange the afore-mentioned real estate, subject to trusts aggregating Two Hundred Thousand dollars (\$200,000.00), for Lots Eighty-one (81), Eight-two (82), Eighty-three (83), Eighty-four (84), Eighty-five (85), Eighty-six (86), Eighty-seven (87), Eighty-eight (88), Eighty-nine (89) and Ninety (90), in Square One Hundred and Seventy-nine (179), in the District of Columbia, subject to a first trust of Four Hundred Thousand Dollars (\$400,000.00) at six per cent., and a second trust, to be placed thereon by the defendant corporation, in the sum of One Hundred and Fifty Thousand dollars (\$150,000.00), payable Two Thousand dollars (\$2,000) per month, with interest at six per centum per annum; that there was in process of construction upon the last described real estate an apartment house which, at the time of the signing of said contract, had not been completed.

16 11. Plaintiff further says upon information and belief that after the making of the said contract dated June 5, 1923, at the solicitation of the representatives of Harry Wardman, the other party to the said contract, the said defendant corporation, acting through its Vice-President, J. V. Morris, turned over to the representatives of the said Harry Wardman what purported to be a deed conveying the real estate of the defendant corporation to the defendants Hobbs and Bones; that the said defendants, and the representatives of the said Wardman, in fact knew, and were further chargeable by law with knowledge of the law of the State of Delaware and the provisions of the charter of the defendant corporation, requiring that any attempted sale or exchange of the defendant corporation's whole property to be valid must be authorized by the stockholders of the defendant corporation, at a meeting duly called for that purpose; that not only did the defendants have the aforesaid knowledge, but plaintiff is informed and believes and therefore avers that said facts were explained to said Bones and Hobbs and Wardman and that the alleged deed to said property hereinafter referred to was attempted to be executed and delivered at the request of the said Wardman because of his contemplated early departure for Europe and

the same was delivered upon the express condition that it would not be considered valid or operative nor would it be recorded or attempted to be used until a lawful meeting of the stockholders of the Lincoln Hotel Corporation had been convened and the proposition had been authorized by a vote of seventy-five per cent of the stock is-

17 sued and outstanding and entitled to vote as provided by the company's charter, otherwise that the entire proposed transaction would be terminated, void and of no effect. Further it was agreed that in the event said stockholders did approve of said proposition that contemporaneously with the recording of the deed for the company's property, there would be delivered and recorded a deed to the property designated as the R Street apartments subject to certain encumbrances aggregating about \$200,000.00. That said Wardman did depart for Europe and plaintiff is informed is now overseas and plaintiff charges no meeting of said stockholders was called or had; but notwithstanding such knowledge of the facts and the law, the said defendants caused to be placed upon the land records of the District of Columbia, on the 9th day of June, 1923, the afore-mentioned paper-writing, purporting to convey to them the title to the defendant corporation's real estate in fee-simple, although by the provisions of the purported contract between the defendant corporation and the said Harry Wardman, hereinbefore referred to, it was further specifically provided, "That this agreement shall be consummated simultaneously and within thirty days from completion of R Street building." Plaintiff further says that no paper-writing or deed has been executed or delivered to the defendant corporation purporting to convey to said corporation the lots hereinbefore enumerated, attempted to be exchanged as hereinbefore set forth; that by the terms of the alleged contract, no consummation could have been had until the R Street apartments were completed and they are not yet completed and in view of which fact, if for no other reason, plaintiff submits he is entitled to have the entire
18 transaction decreed void.

12. Plaintiff further says he is advised and believes, and therefore avers, that the transaction hereinbefore set forth, whereby the defendant corporation acting through only two of its directors, attempted to agree to exchange its property was void; that the paper-writing purporting to be a deed conveying the title of the defendant corporation to the defendants, Bones and Hobbs, in fee-simple, was also void.

13. Plaintiff further says that, not only is the contract with the said Wardman void, as well as the deed hereinbefore referred to to the defendants, Hobbs and Bones, as grantees, but that any attempt on the part of the defendants, Hobbs and Bones, to retain title in pursuance of said transaction is a fraud upon the rights of the plaintiff under his agreement with the said defendant corporation, which rights he has at no time waived, and that to permit the said deed to remain of record would constitute a cloud upon the title of the defendant corporation to the said real estate, and would injuriously affect the said defendant corporation, as well as the plaintiff as a

stockholder thereof, and all other stockholders of the said corporation, and would also defeat the primary purpose of the said corporation, of engaging in the conduct of a hotel to be erected upon said premises.

14. Plaintiff further says that under the laws of the District of Columbia, a corporation may not engage in the business of buying and selling real estate, although it may acquire real estate incidental to the carrying out of its corporate purposes, and that a foreign corporation doing business in the District of Columbia has no greater right than a domestic corporation; and that the defendant corporation under the law has no right, authority or power to engage in the sale or exchange of real estate in the District of Columbia.

15. Plaintiff further says that the board of directors of the said defendant corporation and its officers have refused, and still refuse, to take such proceedings as may be necessary to annul the said transaction and to remove the cloud of record upon the title of the defendant corporation to the said real estate, although requested so to do by the plaintiff, acting through his agents, and that plaintiff as a stockholder of the said defendant corporation is without remedy save in this Honorable Court.

Wherefore, the premises considered, plaintiff prays:

(1) That the United States writs of subpoena may be issued out of this Honorable Court directed against the defendant, John V. Morris and W. H. Alexander and Harry Wardman, commanding them to appear herein on a day certain to be therein named and answer the exigencies of this amended bill.

(2) That the defendant, Thomas P. Bones and James D. Hobbs, may be restrained and enjoined, *pendente lite* and permanently, from encumbering, selling, or in anywise disposing of the record title to the real estate hereinbefore described, owned by the defendant corporation.

(3) That, by final decree herein, the said paper-writing purporting to be a deed of the real estate of the defendant corporation, conveying the same to the defendants, Bones and Hobbs, in fee-simple, and the said contract with the said Harry Wardman, may be declared to be null and void and set aside and held for naught.

(4) And for such other and further relief as the nature of this bill may require or to the Court may seem just and proper.

JOSEPH H. HIMES,
By WILTON J. LAMBERT,
Atty. & Agent.

WILTON J. LAMBERT,
R. H. YEATMAN,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, ss:

Wilton J. Lambert, being first duly sworn, deposes and says that he has read over the foregoing amended bill of complaint by him

subscribed as attorney for Joseph H. Himes and knows the contents thereof; that the matters and facts therein stated upon personal knowledge are true and those stated upon information and belief, he believes to be true.

WILTON J. LAMBERT.

Subscribed and sworn to before me this 22nd day of June, 1923.

[SEAL.]

GEORGE B. FRASER,
Notary Public, D. C.

“EXHIBIT A.”

Certificate of Incorporation.

First. The name of this corporation shall be Lincoln Hotel Corporation.

Second. Its principal office or place of business in the State of Delaware shall be located in the town of Dover, County of Kent, and its resident agent shall be the Capital Trust Company of Delaware.

Third. The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all of the things herein set forth, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To build, erect, construct, lease or otherwise acquire, manage, occupy maintain and operate buildings for hotel purposes, dwelling houses, apartment houses, office buildings, and other structures.

To buy, own, operate, lease, and occupy lands, buildings for hotels or apartment houses, dwelling houses, office buildings and business structures of all kinds, for the accommodation of the public and of individuals.

To occupy, manage, conduct and operate hotels, apartment houses, dwelling houses, restaurants, lunch and tea rooms, barber shops, billiard halls, and cafes, for accommodation of the public and individuals.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets or liabilities of any persons, firm, association or corporation; to pay for the same in cash, the stock of

22 this company, bonds or otherwise, to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

To apply for, purchase, or in any manner to acquire, and to hold own, use and operate, and to sell or in any manner dispose of, and to grant license or other rights in respect of, and in any manner deal with, any and all rights, inventions, improvements and processes used in connection with or secured under letters patent or copyrights of the United States or other countries, or otherwise, and to work, operate or develop the same, and to carry on any business, manu-

facturing or otherwise, which may directly or indirectly effectuate these objects or any of them.

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this State or any other State, country, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as natural persons might or could do.

To enter into, make and perform contracts of every kind with any person, firm, association or corporation, municipality, body politic, country, territory, State, government, or colony or dependency thereof, and without limit as to amount to draw, make, accept, endorse, discount execute and issue promissory notes, drafts, 23 bills of exchange, warrents bonds, debentures, and other negotiable or transferable instruments and evidences of indebtedness, whether secured by mortgage or otherwise, as well as to secure the same by mortgage or otherwise.

To conduct business in any of the States, territories, colonies, or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property, without limit as to the amount.

To do any and all of the things herein set forth to the same extent as natural persons might or could do and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others.

To purchase, hold, and reissue any of the shares of its capital stock.

In general to carry on any other business in connection therewith, whether manufacturing or otherwise, not forbidden by the laws of the State of Delaware, and with all the powers conferred upon corporations by the laws of the State of Delaware.

Fourth. The total authorized capital stock of this Corporation is One Million Dollars (\$1,000,000.) divided into Ten Thousand (10,000) shares of the par value of One Hundred Dollars (100) all common stock.

The amount of capital stock with which this corporation will commence business is

Fifth. The names and places of residence of each of the subscribers to the capital stock are as follows:

24	Names.	Residence.
.....		
.....		

Sixth. The existence of this corporation is to be perpetual.

Seventh. The private property of the Stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The Directors shall have power to make and to alter or amend the by-laws; to fix the amount to be reserved as working capital, and to authorize and cause to be executed, mortgages and liens without limit as to amount, upon the property and franchises of this corporation.

With the consent in writing, and pursuant to a vote of the holders of 75 per cent of the capital stock issued and outstanding, the Directors shall have authority to dispose, in any manner, of the whole property of this corporation.

The by-laws shall determine whether and to what extent the accounts and books of this corporation, or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account, or book, or document of this corporation, except as conferred by law or the by-laws, or by resolution of the stockholders.

The stockholders and directors shall have power to hold their meetings and keep the books, documents and papers of the corporation outside of the State of Delaware, at such places as may be from time to time designated by the by-laws, or by resolution of the
25 stockholders or directors.

The directors shall have power by a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws, to designate, two or more of their number to constitute as Executive Committee, which Committee shall for the time being, as provided in said resolution or in the by-laws, have and exercise any or all the powers of the Board of Directors which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the said company to be affixed to all papers which may require it.

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the statutes of the State of Delaware, and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation.

It is the intention that each of the objects, purposes and powers specified in all the paragraphs of the third section hereof shall be regarded as independent objects, purposes and powers.

We the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this certificate, and do certify that the facts herein stated are true; and we have accordingly hereunto set our respective hands and seals.

Dated at Washington, D. C., — — —, 1922.

— — —. [SEAL.]

— — —. [SEAL.]

— — —. [SEAL.]

26 DISTRICT OF COLUMBIA, ss:

Be it remembered, that on this — day of —, 1922, personally appeared before me, the subscriber, a Notary Public for the District of Columbia, — — — and — — —, parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said Certificate of Incorporation to be their act and deed and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Notary Public, D. C.

(Endorsed.)

June 22, 1923.

Leave is hereby granted : — — — to file the within amended bill of complaint.

WALTER I. MCCOY,
Chief Justice.

Motion to Dismiss.

Filed June 25, 1923.

* * * * *

Now come the defendants, Thomas P. Bones and James D. Hobbs, and move the Court to dismiss the Amended Bill herein filed against them for the following reasons:

1. The said Amended Bill upon its face fails to set forth facts sufficient to show a cause of action against them or either of them.

2. There is no equity against them or either of them shown upon the face of the Amended Bill in favor of the plaintiff.

27 3. It appears from the face of the Amended Bill that the Court has no jurisdiction over the subject matter of the alleged cause of action.

4. It appears upon the face of the Amended Bill that the Court has no jurisdiction to grant the relief prayed in the Amended Bill, or to grant any relief upon the cause of action attempted to be stated in the Amended Bill.

DANIEL T. WRIGHT,
PHILIP ERSHLER,

Attorneys for Thomas P. Bones and James D. Hobbs.

Messrs. Lambert & Yeatman.

DEAR SIRS:

Please take notice that the above Motion is calendared for hearing on Friday, June 29th next at 10 o'clock A. M., before Mr. Justice Siddons.

DANIEL T. WRIGHT,
PHILIP ERSHLER,

Attorneys for Thomas P. Bones and James D. Hobbs.

Answer of Defendant Lincoln Hotel Corporation.

Filed June 29, 1923.

* * * * *

This defendant, for answer to the Amended Bill of Complaint, answering says:

1. It admits the allegations contained in paragraph 1 of said bill.
2. It admits the allegations contained in paragraph 2 of said bill.
3. It admits the allegations contained in paragraph 3 of said bill.
4. It admits the allegations contained in paragraph 4 of said bill.
- 28 5. It admits the allegations contained in paragraph 5 of said bill.

6. Answering paragraph 6 of said bill this defendant says that the total incumbrance on said property amounts to about \$195,000, and it admits that the third trust amounting to \$12,500 is held by the Potomac Finance Corporation.

7. In answer to paragraph 7, this defendant admits that the meeting was held on the 6th of April, 1923, which was attended by all of the Directors; that the meeting of April 6 was recessed from time to time, said recessed meetings by agreement to be held either at the offices of Walter A. Johnston, Colorado Building, or at the office of the company in the Woodward Building, and that same should appear in its minutes, and that at the meeting of June 7, 1923, the Board of Directors authorized the execution of a deed conveying the property to the defendant Harry Wardman, or his nominee in accordance with a contract of sale agreement, in exchange for lots 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 in Square 179, with a first deed of trust for \$400,000 at 6 per cent and a second deed of trust for \$150,000, payable \$2,000 a month, the payments on second trust to commence six months after the building should be completed.

8. In answer to paragraph 8, this defendant admits the charter of incorporation required the consent of 75 per cent of the outstanding stock in the sale of its entire assets, but it says that this contemplated sale was in effect an exchange.

9. In answer to paragraph 9, this defendant says that it was understood that the recessed meetings would be held at either
29 the offices of Walter A. Johnston, Colorado Building, or at the office of the company in the Woodward Building, and the same should have been set out in the minutes. The recessed meeting was to be held on the date to which the recess was taken at either one of the aforementioned places which are close together. It admits that the vote to dispose of the property was not passed pursuant to consent of 75 per cent of the outstanding stock, but that the Board of Directors felt that it was to the interest of the stockholders to take the action taken because the broker representing defendant Harry Wardman had represented that Harry Wardman was leaving for

Europe and unless the deed was executed at once that the deal would be off, and that if the deed was executed at once he would agree to a provision being put in the deed conveying the property by this defendant to Harry Wardman or his nominee that the grantees would assume and agree to pay the mortgages,—that is three mortgages existing upon the property at 12th and H Streets, Northwest, and the Directors of this defendant believed that unless some action was taken at once that the property of this corporation at 12th and H Streets, Northwest, would be sold under either the second or third trusts, both of which were then overdue and unpaid, and they believed that the expense required to carry the property which was to be conveyed by the defendant Harry Wardman, and which was to be exchanged for the property of this defendant, would make it a safer and better property for this corporation to handle with its limited finances; and that it could thereby save for its stockholders their investment and realize a fair return from either the use of the

30 property as a hotel or an apartment hotel.

10. In answer to paragraph 10, it admits the allegations of said paragraph to be true.

11. In answer to paragraph 11, this defendant admits that it turned over to Harry Wardman as set out in its answer to paragraph 8, a deed to its property at 12th and H Streets, and it says that it would have endeavored but for the filing of this suit to have gotten the stockholders of defendant corporation to ratify and confirm the exchange of said properties and the execution of said deed. That the understanding between the representative of the defendant Harry Wardman and this defendant through its Vice President was that said deed, if executed by this defendant and given to him, showed that the said Harry Wardman or his nominees assumed to pay the mortgages upon said property, that then the said Harry Wardman would obtain loans from banks to take care of said mortgages, and prevent a sale of the property before leaving for Europe, which he intended to do on the 9th of June, and unless this was done at once the entire deal would be off notwithstanding, and that the transaction as set forth in the contract agreement of sale provided that the execution of the deeds was to take place simultaneously thirty days from the completion of the R Street property building, which defendant Wardman fixed as September 1923.

12 & 13. In answer to paragraphs 12 and 13, this defendant says that the action taken by its Board was considered by its Board for the best interests of the stockholders.

14. In answer to paragraph 14, this defendant denies that

31 it engaged in buying and selling real estate. That the exchange of the property was in accord with the purposes of the organization of defendant corporation, which Board believed that its business could be conducted at the R Street Building as well as at the 12th and H Street site, though upon a much smaller scale.

15. This defendant denies that it has refused to take any proceedings to annul the transaction, or that it has been requested to take any proceedings.

And having fully answered, it submits its interests to the determination of this Honorable Court.

LINCOLN HOTEL CORPORATION,
By J. V. MORRIS,
Vice-President.

W. A. JOHNSTON,
Atty. for Defdt.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed as Vice President of the Lincoln Hotel Corporation; and known the contents thereof; that the facts therein stated to be true are true, and those stated on information and belief I believe to be true.

J. V. MORRIS.

Subscribed and sworn to before me this 29th day of June, 1923.
[SEAL.] CATHERINE E. CATE,
Notary Public, D. C.

32

Decree Dismissing Bills.

Filed July 2, 1923.

* * * * *

This day this cause came on for hearing upon the motion of the defendants Harry Wardman, Thomas P. Bones and James D. Hobbs to dismiss the Amended Bill of the plaintiff herein and the court having heard the arguments of counsel for the respective parties and being fully advised in the premises, finds that the said motion of the respective defendants above named is well taken and does hereby sustain the same.

And the plaintiff not desiring to further amend his Bill, it is this 2nd day of July 1923 ordered, adjudged and decreed that the said original and amended Bill of the plaintiff be and the same are hereby dismissed as to the defendants Harry Wardman, Thomas P. Bones and James D. Hobbs.

WALTER I. McCOY.
Chief Justice.

The plaintiff in open court notes an appeal from the foregoing decree and the court fixes the amount of the cost bond on appeal at \$100 or \$50.00 cash to be deposited with the Clerk in lieu thereof.

WALTER I. McCOY.
Chief Justice.

Memorandum.

July 13, 1923.—\$50 deposited in lieu of cost bond on appeal.

33

Assignment of Errors.

Filed August 1, 1923.

* * * * *

The Court erred—

1. In the holding that the plaintiff is not entitled to relief under the allegations of the amended bill of complaint.

2. In holding that the allegations of the amended bill of complaint do not make out a case for the setting aside of the deed of the defendants, Bones and Hobbs, referred to therein.

3. In holding that the allegations of the amended bill of complaint do not entitle the plaintiff to a decree enjoining the defendants, Bones and Hobbs, from encumbering or disposing of the real estate described therein.

4. In signing the decree of July 2, 1923, dismissing said amended bill of complaint.

WILTON J. LAMBERT,
R. H. YEATMAN,
Attorneys for Plaintiff.

Designation of Record.

Filed August 1, 1923.

* * * * *

The clerk of the court will include in the transcript of record on appeal in the above cause, the following:

MEMO.—Bill filed June 12, 1923, and appearance of Wilton J. Lambert and R. H. Yeatman for plaintiff.

1. Amended bill and exhibit filed June 22nd, 1923.
- 34 2. Motion of defendants, Hobbs and Bones to dismiss bill and notice, filed June 25th, 1923.
3. Answer of defendant, Lincoln Hotel Corporation, to bill, filed June 29th, 1923.
4. Decree dismissing bill and appeal, signed July 2, 1923.

MEMO.—\$50 deposited in lieu of cost bond on appeal July 13th, 1923.

5. Assignment of errors.
6. This designation of record.

WILTON J. LAMBERT,
R. H. YEATMAN,
Attorneys for Plaintiff.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 34, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 41390 in Equity, wherein Joseph H. Himes is plaintiff and Lincoln Hotel Corporation, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of January, 1924.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4103. Joseph H. Himes, appellant, vs. Lincoln Hotel Corporation, a corporation, et al. Court of Appeals, District of Columbia. Filed Jan. 14, 1924. Henry W. Hodges, clerk.

